

**REMARKS**

Claims 1-7, 31, 35, 41-46 and 49-54 were examined. Claims 8-20, 32-43, 36-40, 47, 48, 55 and 56 were withdrawn. Claims 21-30 were cancelled. Claims 57-60 were added in the amendment mailed to the USPTO on June 14, 2004. According to the Office Action Summary of September 14, 2004 the action was responsive to the communication filed on June 16, 2004. Therefore, claims 57-60 are to considered and examined.

According to the Office Action, claims 1-7, 31, 35, 41-46 and 49-54 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable application 10/613,414.

This is respectfully traversed.

Firstly , the rejection is premature because the claims in US Patent application 10/613,414 have not been patented.

Secondly, according to MPEP804 in determining whether a nonstatutory basis exists for a double patenting rejection, the first question to be asked is - does any claim in the application define an invention that is merely an obvious variation of an invention claimed in the patent?

In this case the answer is no. Obviousness-type double patenting requires rejection of an application claim when the claimed subject matter is **not patentably distinct** from the subject matter claimed in a commonly owned patent when the issuance of a second patent would provide unjustified extension of the term of the right to exclude granted by a patent. See *Eli Lilly & Co. v. Barr Labs., Inc.*, 251 F.3d 955, 58 USPQ2d 1865 (Fed. Cir. 2001); *Ex parte Davis*, 56 USPQ2d 1434, 1435-36 (Bd. Pat. App. & Inter. 2000).

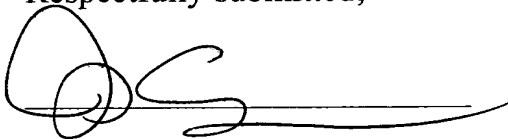
In claim 1 of this application Z is defined as NR<sup>b</sup> and the definition of R<sup>b</sup> differs between the claims of the two applications. The definition of R<sup>1</sup> differs between the two inventions.

From the claims of US Patent application 10/613,414, it is not obvious that  $R^1$  can represent halo, azido, isothiocyanate, isothiocyanate, thioalcohol or that  $R^1$  can represent  $N(R^4)_2$  where  $R^4$  is other than hydrogen.

Therefore, since the invention defined in claims 1-7, 31, 35, 41-46 and 49-54 is not obvious over the claims of US Patent application 10/613,414, it is respectfully requested that this rejection be withdrawn.

Applicants submit that the present application is in condition for allowance and favorable consideration is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a horizontal line.

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